



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

John V. Edwards
Senior General Attorney

Writer's Direct Dial Number

Phone (757) 628-2838
Fax (757) 533-4872
E-mail John.Edwards@nscorp.com

December 9, 2008

224163

Via E-filing

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Petition for Declaratory Order
Finance Docket No. 35157

Dear Ms. Quinlan:

I attach the following documents for filing in the above-captioned proceeding.

1. Petition of Norfolk Southern Railway Company for Leave to file a Reply to a Reply.
2. Limited Reply of Norfolk Southern Railway Company to Reply of the City of Alexandria to Decision served November 6, 2008.

Sincerely,

A handwritten signature in black ink, appearing to be 'JVE', written over the name John V. Edwards.

John V. Edwards

cc: Service List

Before The
Surface Transportation Board

Finance Docket No. 35157

PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER

PETITION OF NORFOLK SOUTHERN RAILWAY COMPANY
FOR LEAVE TO FILE A REPLY TO A REPLY

224163

Gary A. Bryant
WILLCOX & SAVAGE, P.C.
One Commercial Place, Suite 1800
Norfolk, Virginia 23510
(757) 628-5500
(757) 628-5566 Facsimile

John V. Edwards
Senior General Attorney
NORFOLK SOUTHERN
CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

*Attorneys for Norfolk Southern
Railway Company*

December 9, 2008

**Before The
Surface Transportation Board**

Finance Docket No. 35157

**PETITION OF THE CITY OF ALEXANDRIA, VIRGINIA
FOR DECLARATORY ORDER**

**PETITION OF NORFOLK SOUTHERN RAILWAY COMPANY
FOR LEAVE TO FILE A REPLY TO A REPLY**

Norfolk Southern Railway Company hereby petitions the Surface Transportation Board (the "STB" or the "Board") for leave to file a brief reply to the Reply filed by the City of Alexandria (the "City"). Permitting Norfolk Southern to submit a reply will not prejudice any party for two reasons: (1) the City, in an agreement with Norfolk Southern, *agreed to the submission of a reply, as set forth further below, and* (2) Norfolk Southern's reply is limited to correction of omissions and mischaracterizations of the record and those raised for the first time in the City's December 8, 2008 reply, some of which are not properly before the Board. Norfolk Southern has consulted with counsel to the City, who has consented to the submission of the reply.

Allowing Norfolk Southern to reply will assist the Board in concluding this proceeding by correcting the record as to these new and mischaracterized matters, and by clarifying the issues that should be properly before the Board. *See* STB Finance Docket No. 35157, *Petition of the City of Alexandria for Declaratory Order* (served November 6, 2008), *slip op.* at 2 (granting the City's petition for leave to file a reply to a reply).

Pursuant to an agreement (the "Discovery Agreement," attached as Exhibit A), Norfolk Southern consented to the City's limited use of certain discovery from a pending court proceeding, but that Norfolk Southern's consent "is conditioned upon the City's agreement that NSRC will have the opportunity to address any additional information included in the City's response." Discovery Agreement at 2. Further, Norfolk Southern's consent was granted "but only to the extent that the discovery is *directly responsive* to one of" four enunciated items listed in the Board's November 6, 2008 decision "and provided further that the discovery is used in a manner directly responsive to the items in the STB's decision."¹ *Id.* (emphasis in the original).

Norfolk Southern seeks to submit a brief reply to address additional information included in the City's response (such as information on other Norfolk Southern facilities, motivations for entering into the particular business model involved in the Alexandria facility) as well as other new items not directly relevant to one of the four enumerated items in the Board's November 6, 2008 decision.

Norfolk Southern submits that the City has attempted to expand the issues beyond those raised by the STB insofar as it, among other things, discusses other Norfolk Southern facilities, the motivation for progressing under one business model versus another business model, and what constitutes a "core competency" of Norfolk Southern.

¹ In its motion for a protective order, the City characterizes the Discovery Agreement loosely as: "The parties have agreed that information disclosed in the course of discovery in that proceeding may be used in the instant proceedings before the Board, so long as the information is relevant to the inquiries posed in the November 6 Decision in this proceeding."

For the foregoing reasons, Norfolk Southern respectfully requests leave to file the attached Reply to a Reply.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John V. Edwards', is written over a horizontal line.

Gary A. Bryant
WILLCOX & SAVAGE, P.C.
One Commercial Place, Suite 1800
Norfolk, Virginia 23510
(757) 628-5500
(757) 628-5566 Facsimile

John V. Edwards
Senior General Attorney
NORFOLK SOUTHERN
CORPORATION
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838

December 9, 2008

*Attorneys for Norfolk Southern
Railway Company*

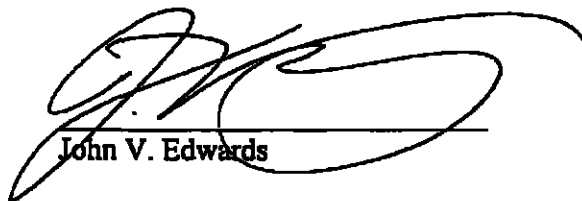
Certificate of Service

I hereby certify that on this ninth day of December, 2008, I have caused to be served, by U.S. Mail, postage prepaid, or more expeditious means, to the persons listed below, a copy of the Petition of Norfolk Southern Railway Company for Leave to File a Reply to a Reply

Ignacio B. Pessoa
Christopher P. Spera
Office of the City Attorney
301 King Street
Suite 1300
Alexandria, VA 22314
703-838-4433

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 905
Washington, D.C. 20036
202-955-5600

Dated: December 9, 2008



John V. Edwards

EXHIBIT A

SINCE 1895



ATTORNEYS AT LAW

Gary A. Bryant
(757) 628-5520
gbryant@wilsav.com

65848 027

November 13, 2008

W. Eric Pilsch, Esquire
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., NW, Ste. 905
Washington, D.C. 20036

Charles A. Spitulnik, Esquire
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Ave., NW, Ste. 905
Washington, D.C. 20036

Re: Norfolk Southern Railway Company, et al v. City of Alexandria, et al.
Case No. 1:08cv618

Gentlemen:

The purpose of this letter is to set forth our agreement with regard to the limited use of certain discovery from the above-referenced matter in the City's Petition for Declaratory Order (Docket No. 35157) now pending before the Surface Transportation Board ("STB").

The STB's November 6th decision specifically denies the City's request for discovery, and instead directs NSRC to submit narrative answers in the form of verified statements, with necessary exhibits, to the following four items:

1. Answers to the following questions: With whom do shippers communicate to arrange transloading at the facilities? Who schedules the transloading, and who collects the fees for the transloading? What is the extent of the involvement of RSI and its affiliates in the ownership and construction of the Facility, delivery of the ethanol to the tank cars, the unloading activities that take place at the Facility, and redelivery of the ethanol to blending facilities? What specific measures does NS take to control, monitor, and supervise the operation of the Facility?
2. A copy of any additional agreements NS has with RSI or any RSI affiliate that relate to the Facility or the transportation of ethanol to the Facility.

1-846150.1

Reply to Norfolk Office

ONE COMMERCIAL PLAZA SUITE 1800 NORFOLK, VIRGINIA 23510 757 628.6500 FACSIMILE 757.628.5566
222 CENTRAL PARK AVENUE SUITE 1800 VIRGINIA BEACH, VIRGINIA 23462 757 628 5600 FACSIMILE 757 628 5659

WWW.WILCOXANDSAVAGE.COM

NOV 18 2008

Willcox & Savage

W. Eric Pilsk, Esquire
Charles A. Spitulnik, Esquire
November 13, 2008
Page 2

3. A copy of Tariff 9238-E and any successor tariff.
4. A list of the shippers, not affiliated with RSI, that have used the Facility since it has opened.

In compliance with the STB's decision, NSRC intends to provide the narrative answers as directed. You have requested that NSRC consent to allow the City to use discovery from the above-referenced matter in its response to NSRC's submission. As the STB has stated specifically the items to be addressed, NSRC will consent to the City's use of discovery from the above-referenced matter, but only to the extent that the discovery is *directly responsive* to one of the above-referenced items specifically listed in the STB's decision and used in a manner directly responsive to the items in the STB's decision.

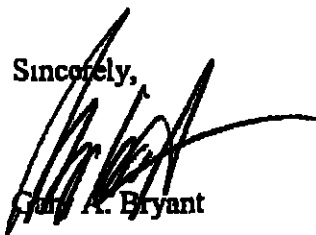
NSRC's consent is conditioned upon the City's agreement that NSRC will have the opportunity to address any additional information included in the City's response.

NSRC's primary concern is that the parties not expand the issues by using any discovery beyond the specific issues raised by the STB. Accordingly, the City may not submit discovery not directly responsive to the four items included in the STB's decision.

To the extent that the City concludes that its response will include confidential information, NSRC and the City will take the necessary steps to protect the confidentiality of such information, including the entry of an appropriate protective order and/or compliance with the procedures set forth in 49 C.F.R. 1104.14 to segregate confidential materials.

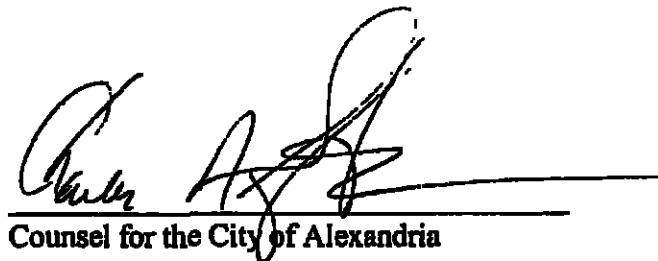
If I have accurately set forth the terms of our understanding, please sign and return the duplicate original included herewith.

Sincerely,



Gary A. Bryant

GAB:ceb
Enclosure
cc: John Edwards, Esquire



Counsel for the City of Alexandria